

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

9 ON DEMAND DIRECT RESPONSE, LLC,  
10 DISTRICT OF NEVADA AND ON  
DEMAND DIRECT RESPONSE III, LLC.

Case No. 2:15-cv-01576-MMD-NJK

**ORDER**

**Plaintiff.**

v.

12 SHANA LEE MCCART-POLLAk d/b/a  
13 LOL BUDDIES ENTERPRISES.

## Defendants.

## ALL RELATED ACTIONS

17 Before the Court is Jay Franco Parties' Motion to Strike Portions of Third Party  
18 Plaintiff's Amended Third Party Complaint (ECF No. 231) to which Spiral Toys LLC and  
19 Mark Meyers (collectively "Spiral Toys") have joined (ECF No. 232). The Court has  
20 reviewed Third Party Plaintiff Shana Lee McCart-Pollak's ("Plaintiff") response (ECF No.  
21 237) and Jay Franco Parties' reply (ECF No. 238).

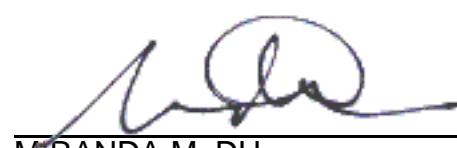
22 In an Order issued on September 30, 2016, the Court dismissed claims against all  
23 Third-Party Defendants, but granted Plaintiff leave to amend two claims for unjust  
24 enrichment and fraud against Third Party Defendant Kevin Harrington. (ECF No. 191.)  
25 Thus, claims against the following groups of Third-Party Defendants were dismissed and  
26 judgment was entered in their favor: Jay Franco & Sons, Inc., Jay At Play International,  
27 Ltd., Echo Factory, Inc., Hutton Miller, LLC, Digital Target Marketing, LLC (collectively  
28 “Jay Franco Parties”); Spiral Toys LLC and Mark Meyers (collectively “Spiral Toys”). (*Id.*,

1 ECF No. 192.) The Court subsequently denied Plaintiff's motion for reconsideration of the  
2 September 30, 2016, Order. (ECF No. 215.) Plaintiff was given leave to amend her two  
3 claims against Harrington. (*Id.* at 7.) However, Plaintiff's Third Party Amended Complaint  
4 ("TPAC") names Jay Franco Parties, among others, as third party defendants. (ECF No.  
5 225 at 2-4; 24-28.)

6 Jay Franco Parties ask the Court to strike all allegations and claims against them  
7 from the TPAC. (ECF No. 231.) Plaintiff responds that she asserts claims against Third  
8 Party Defendants who have been dismissed to preserve her appellate rights.<sup>1</sup> (ECF No.  
9 237.) However, Plaintiff has not waived her right to appeal the Court's dismissal of claims  
10 against Jay Franco Parties and Spiral Toys and would not waive such right by amending  
11 her complaint to assert two claims against Harrington. In fact, by failing to limit the claims  
12 in her TPAC to claims for fraud and unjust enrichment against only Harrington, Plaintiff  
13 has violated the Court's Order granting her leave to amend.

14 It is therefore ordered that the Jay Franco Parties' Motion to Strike Portions of Third  
15 Party Plaintiff's Amended Third Party Complaint (ECF No. 231) and Spiral Toys' joinder  
16 (ECF No. 232) are granted. All claims asserted against Jay Franco Parties and Spiral  
17 Toys as Third Party Defendants, along with all references of these parties as Third Party  
18 Defendants, are stricken from the TPAC. Specifically, the following paragraphs in the  
19 TPAC will be stricken: 3-10, 80-81, 91, 96-98, 100-10, 155-157, 158-163, 164-176 and  
20 177-182.

21 DATED THIS 4<sup>th</sup> day of August 2017.



22  
23 MIRANDA M. DU  
24 UNITED STATES DISTRICT JUDGE  
25  
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27  
28 <sup>1</sup>Plaintiff cites to *Forsyth v. Humana, Inc.*, 114 F.3d 1467 (9th Cir. 1997), but this  
case is no longer good law. See *Lacey v. Maricopa County*, 693 F.3d. 896, 928 (9th Cir.  
2012).